



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ENROLLED ANALYSIS**

Draft

Date Amended:	Enrolled	Bill No:	<a href="#">AB 1748</a>
Tax:	Sales and Use Special Taxes and Fees	Author:	Assembly Revenue and Taxation Committee
Related Bills:			

**BILL SUMMARY**

This bill contains **Board of Equalization-sponsored provisions**<sup>1</sup> for the sales and use tax and special taxes and fees programs, which would do the following under the Revenue and Taxation Code:

- Amend Section 6405 to increase the use tax exemption for the amount of tangible personal property purchased in a foreign country and personally hand carried into this state within any 30-day period from \$400 to \$800 to conform to changes in the federal duty-free exemption.
- Amend Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law to provide appeals rights to taxpayers who have been assessed a 10 percent penalty for failure to make a prepayment in accordance with the law and that failure is due to negligence or intentional disregard for the law.
- Amend Section 7204.3 of the Bradley-Burns Uniform Local Sales and Use Tax Law to correct an erroneous term and amend Section 7273 of the Transactions and Use Tax Law to add wording consistent with other subdivisions contained in Section 7273. (Technical)
- Amend Section 7211 of the Bradley-Burns Uniform Sales and Use Tax Law to clarify that the Board of Equalization shall continue to enforce the Bradley-Burns ordinance of any city or city and county that levies a tax administered by the Board under the Transactions and Use Tax Law. (Technical)
- Amend Section 7252 and delete Sections 7252.5 through 7252.30 of the Transactions and Use Tax Law to simplify the definition of “districts.”
- Add Section 7269 to the Transactions and Use Tax Law to provide for a limitation on redistributions of transactions and use taxes.
- Repeal Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns Uniform Local Sales and Use Tax Law and Sections 7251.2 and 7271.05 of the Transactions and Use Tax Law as these sections were enacted to serve a specific purpose and that purpose has been accomplished. (Technical)
- Repeal Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65 of the Transactions and Use Tax Law to eliminate special statutes that are redundant due to subsequent legislation that authorized cities to levy transactions and use taxes for general and special purposes. (Technical)

<sup>1</sup> The bill is Board-sponsored except with regard to the proposed amendments to Section 18533 of the bill, which fall under the purview of the Franchise Tax Board.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

- Add Sections 7657.5 (Motor Vehicle Fuel Tax Law), 8880 (Use Fuel Tax Law), 11408.5 (Private Railroad Car Tax), 30285 (Cigarette and Tobacco Products Tax Law), 32258 (Alcoholic Beverage Tax Law), 38454.5 (Timber Yield Tax), 40105 (Energy Resources Surcharge Law), 41099 (Emergency Telephone Users Surcharge Law), 43159.1 and 43159.2 (Hazardous Substances Tax Law), 45158 (Integrated Waste Management Fee Law), 46159 (Oil Spill Response, Prevention, and Administration Fees Law), 50112.6 (Underground Storage Tank Maintenance Fee Law), 55045.1 (Fee Collection Procedures Law), and 60210.5 (Diesel Fuel Tax Law) to authorize the Board to provide relief of liability for an innocent spouse, if, in light of all the facts and circumstances, it is inequitable to hold that spouse liable for any unpaid tax, fee, or any deficiency (or any portion of either).
- Amend Section 9304 of the Use Fuel Tax Law and Section 60653 of the Diesel Fuel Tax Law to delete the word “License” to conform to the correct title of the “Motor Vehicle Fuel Tax Law.” (Technical)
- Amend Section 30182 of the Cigarette and Tobacco Products Tax Law to change the due date of the monthly report filed by cigarette distributors who pay on a twice-monthly basis to the same report due date as cigarette distributors paying on a monthly or weekly basis.
- Amend Section 30187 of the Cigarette and Tobacco Products Tax Law to change the return due date for consumers owing excise taxes on purchases from out-of-state cigarette sellers to be consistent with the due date of their use tax return.
- Amend Sections 41030, 41031, and 41032 of the Emergency Telephone Users Surcharge Law to change the effective date of the surcharge rate period from November 1 through October 31 to January 1 through December 31 (calendar year basis) in order to prevent quarterly and yearly filers from having to report split tax returns each time there is a rate change effective November 1.

**ANALYSIS****Purchases from Foreign Countries**  
*Revenue and Taxation Code Section 6405***Current Law**

Under existing law, use tax is imposed on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. The obligation to pay the use tax is on the consumer. As a result of the 1984 Tax Penalty Amnesty Bill (Ch. 1490, Stats. 1984), the Board created the U. S. Customs Program for the purpose of collecting unpaid use tax from consumers. The Board is granted authorization from the U. S. Customs Service to access passenger declarations filed at various ports of entry throughout California. This information is used to generate use tax returns.

Section 6405 of the Revenue and Taxation Code, as added by Senate Bill 2455 (Ch. 1533, Stats. 1990), provides that the storage, use, or other consumption of the first \$400 of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand carried into this state from the foreign country during any 30-day period is exempt from the use tax. This exemption was added into law to conform to the U.S. traveler's standard duty-free exemption. However, as of November 4, 2002, the U.S. traveler's standard duty-free exemption was increased from \$400 to \$800.

**Proposed Law**

This provision would amend Section 6405 of California's use tax provisions to increase the use tax exemption provided in Section 6405 from \$400 to \$800.

**Comment**

**Purpose.** This amendment would place California's use tax exemption on foreign purchases in conformity with the U.S. traveler's standard duty-free exemption.

**Appeals Rights for Prepayment Penalty**  
*Revenue and Taxation Code Sections 6478 and 7659.7*

**Current Law**

Under the Sales and Use Tax Law and the Motor Vehicle Fuel Tax Law, certain taxpayers whose monthly tax liabilities meet or exceed certain thresholds are required to make monthly prepayments of the tax liability. Under these laws, if a taxpayer fails to timely make the prepayment, or fails to make the full prepayment required, a six percent penalty applies to the amount not timely remitted. However, under Section 6478 of the Sales and Use Tax Law and Section 7659.7 of the Motor Vehicle Fuel Tax Law, that penalty may be increased to 10 percent if a person's failure to make a prepayment in accordance with the law is due to negligence or intentional disregard of the law. This 10 percent penalty is assessed in cases where a taxpayer has repeatedly been late in making his or her prepayments or repeatedly failed to make the full prepayment, and has received a warning from the Board that a 10 percent negligence penalty would apply if the taxpayer continues to fail to make prepayments in accordance with the law. Unlike other penalties imposed in the law for late payments, the law does not provide a mechanism to provide relief of this negligence penalty when the Board finds that the person's failure to make a prepayment in accordance with the law is due to reasonable cause. Instead, the taxpayer must pay the penalty and file a claim for refund. If the claim for refund is denied, the taxpayer may then pursue his or her appeals rights.

**Proposed Law**

This measure would amend the laws so that the negligence penalty imposed under Sections 6478 and 7659.7 would be assessed as a deficiency determination and permit the taxpayer to petition for redetermination.

**Comment**

**Purpose.** These amendments would provide taxpayers with an opportunity to dispute the application of the discretionary negligence penalty through the filing of a petition for redetermination without having to pay the penalty and request a refund.

**Technical Wording Changes**  
*Revenue and Taxation Code Sections 7204.3 and 7273*

**Current Law**

Assembly Bill 1809 (Ch. 49, Assembly Budget Committee, signed by Governor Schwarzenegger on June 30, 2006), a budget trailer bill, made a number of revenue and taxation related changes necessary to implement the Budget Act of 2006. Among those changes, AB 1809 amended Section 7204.3 of the Bradley-Burns Uniform Local Sales and Use Tax Law and Section 7273 of the Transactions and Use Tax Law to adopt a new simplified costing methodology to allocate the Board's administrative costs for state and local sales and use taxes among the state, local entities, and special taxing districts. The simplified costing methodology was developed by Board staff and recommended by the Legislative Analyst's Office (LAO).

Sections 7204.3 and 7273 were amended to require the Board, beginning fiscal year 2006-07, and each fiscal year thereafter, to charge each local entity and special taxing district an amount for the Board's services in administering the local sales and use tax ordinance of that jurisdiction based on the methodology described in Alternative 4C of the November 2004 report by the State Board of Equalization entitled "Response to the Supplemental Report of the 2004 Budget Act."

The amendments to these sections contained certain drafting errors. With respect to Section 7204.3, subdivision (a)(2) of this section incorrectly uses the term "district," rather than "local entity." Section 7204.3 requires the Board to charge each city, city and county, county, or redevelopment agency for the services it provides in administering the local entity's tax ordinance. This statute covers a local entity (i.e., city, city and county, county, or redevelopment agency) but does not cover a district. The term "district" refers to special tax districts under the Transactions and Use Tax Law, not local entities under Bradley-Burns Uniform Local Sales and Use Tax Law.

With respect to Section 7273, subdivision (a)(1) was amended to add the wording "each district." For consistency, it is suggested that this same wording be added to subdivision (a) (2) of Section 7273.

**Proposed Law**

This measure would correct an inadvertent drafting error in Section 7204.3 to replace the term "district" with "local entity," consistent with other terms contained in both Section 7204.3 and all other sections under Bradley-Burns Uniform Local Sales and Use Tax Law. This measure would also add "each district" to subdivision (a)(2) of Section 7273, consistent with subdivision (a)(1) of that section.

**Comment**

**Purpose.** These amendments would simply correct certain drafting errors that occurred with the enactment of a budget trailer bill enacted in July, 2006.

**Clarify that the Board will Enforce Local Ordinances**  
*Revenue and Taxation Code Section 7211*

**Current Law**

Under the existing Bradley-Burns Uniform Local Sales and Use Tax Law, Section 7203.5 provides that the Board shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, or city and county, if that city, county, or city and county imposes a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to specified provisions of the Bradley-Burns law. Section 7211 of the Bradley-Burns law, however, makes an exception to Section 7203.5's restriction, by authorizing the Board to continue to administer the sales and use tax ordinance of any county which adopts a transactions and use tax ordinance pursuant to a specified provision in the Government Code. The exception provided in Section 7211 was added to the law when counties were given authorization in 1985 to levy district taxes for general purposes.

Under the law, aside from the local tax levied under the Bradley-Burns law (which is uniformly imposed by all cities and counties within the state) the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as “district” taxes. These “district” taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6).

When counties were given general authority to levy transactions and use taxes in 1985, the Legislature did not amend the Bradley-Burns Uniform Local Sales and Use Tax Law to make it clear that the Board may continue to administer district taxes that are imposed by counties through other provisions of law. In addition, when the Legislature began authorizing cities to levy their own district taxes, the Legislature did not amend the Bradley-Burns law to also clarify that the Board may continue to administer these city-imposed district taxes. Although the Board has interpreted Section 7211 as if it referred to cities as well as counties that levy a district tax outside the specific Government Code provision, by its own terms, Section 7211 does not extend to such district taxes. In reality, the safe harbor provided by Section 7211 applies only to one transit district tax which the Legislature authorized Sonoma County to levy (which was authorized under the specific Government Code provision referred to in Section 7211).

**Proposed Law**

This measure would amend Section 7211 of the Bradley-Burns Uniform Local Sales and Use Tax Law to clarify that the Board may continue to administer the sales and use tax ordinance of any city or county that imposes a district tax pursuant to the Transactions and Use Tax Law.

**Comment**

**Purpose.** These amendments are intended to clarify the law with respect to the Board's ability to administer the local tax ordinances of California's cities and counties.

### **“Districts” Definition Simplified**

*Revenue and Taxation Code Sections 7252, and 7252.5 through 7252.30*

#### **Current Law**

Under existing law, the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as “district” taxes. These “district” taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6). Under this part, the term, “district” is defined in 16 separate sections. These definitions were added at the time the Legislature authorized a new local agency to levy a transactions and use tax.

In 1985, when counties were given the authority to levy district taxes, Section 7252.9 was added to the Transactions and Use Tax Law to define a county levying a district tax as a “district.” When cities began to be added to the district tax system in 1990, no such provision was made for them.

#### **Proposed Law**

This measure would 1) include cities within the term “district,” and 2) eliminate the proliferation of definitions of the term “district” in the Transactions and Use Tax Law by providing one definition that would consider all entities levying district taxes as “districts.” A “district” would be defined as any city, county, or city and county or other governmental entity authorized to impose a tax administered by the Board pursuant to Part 1.6 of the Revenue and Taxation Code.

#### **Comment**

**Purpose.** These amendments are intended to simplify the tax code by clarifying that cities are considered “districts,” and by deleting unnecessary and outdated definitions in the law for the term, “districts.”

**Limitation on Redistributions of District Taxes**  
*Revenue and Taxation Code Section 7269*

**Current Law**

Under the existing Bradley-Burns Uniform Local Sales and Use Tax Law, counties are authorized to impose a local sales and use tax at a rate of one percent on the sales price of tangible personal property sold at retail in the county. Cities are also authorized to impose a local sales and use tax rate of up to 0.75 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed one percent. Under the Bradley-Burns Law, 0.25 percent of the one percent tax rate is earmarked for county transportation purposes, and 0.75 percent may be used for city and county general purposes. Cities and counties are required to contract with the Board to perform all functions in the administration and operation of their ordinances imposing the tax. All taxes collected by the Board under contract with cities and counties are transmitted to the cities and counties based on the location in which the sale is made (generally the place of business of the retailer).

Under the law, Section 7209 provides that when the Board determines that the Bradley-Burns Uniform local sales and use tax revenue has been misallocated to a county or city, the Board may redistribute that revenue, but shall not redistribute amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board made that determination.

Section 7209 was added to the law in 1959, as the Legislature realized that when the first local tax redistributions were proposed at that time, redistributing tax throughout the full length of the three-year applicable statute of limitations would cause severe financial hardship to jurisdictions to which local tax revenues had been improperly distributed. As a result, the Legislature enacted Section 7209 to limit the number of tax periods for which a redistribution could be made to the quarterly period for which the Board obtains knowledge of the improper distribution, and the two previous quarters.

Under the law, aside from the local tax levied under the Bradley-Burns law (which is uniformly imposed by all cities and counties within the state) the Transactions and Use Tax Law authorizes local agencies to impose transactions and use taxes – often referred to as “district” taxes. These “district” taxes are authorized by statutes in various codes, but the Board administers all such taxes pursuant to Part 1.6 of the Revenue and Taxation Code (Sections 7251-7279.6).

Under current law, no equivalent to Section 7209 exists for district taxes. While district tax redistributions do not take place with the frequency that they do with respect to the Bradley-Burns local taxes, the financial hardship to the district to which the revenue was improperly distributed can be great.

**Proposed Law**

This measure would provide the same relief to districts that has been available to local tax jurisdictions since 1959. It would limit the number of tax periods for which a redistribution could be made to the quarterly period for which the Board obtains knowledge of an improper distribution, and the two previous quarters.

**Comment**

**Purpose.** Due to the anticipated proliferation of city-wide district taxes, the Board anticipates an increase in errors in district tax reporting with a concomitant need to redistribute district taxes. Consequently, this amendment would place a limit on redistributions of district tax similar to that which now exists in local taxes.

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## **Repeal of Outdated Sections**

*Revenue and Taxation Code Sections 7204.02, 7204.5, 7208, 7251.2 and 7271.05*

### **Current Law**

Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns Uniform Local Sales and Use Tax Law (hereinafter referred to as Bradley-Burns law) and Sections 7251.2 and 7271.05 of the Transactions and Use Tax Law (hereinafter referred to as District tax law) were enacted to address specific issues. Those issues have been addressed and the statutes are no longer needed and should be repealed.

The following provides a summary of these sections:

**Section 7204.02**, added by Senate Bill 30 (Ch. 37, Stats. 1990 First Extraordinary Session), provides that, beginning July 1, 1992, and for each year through and until July 1, 1997, the Board shall reduce local sales tax revenues transmitted to affected cities, counties, and cities and counties by an amount to recover 1/5 of the amount transmitted to these local entities pursuant to Section 7204.01, plus interest. Section 7204.01, also added by SB 30, provided the procedures whereby the local entities could make a request to the Controller to receive an amount attributable to any reductions in local sales tax revenues as a result of the October 17, 1989 earthquake (known as The Loma Prieta Earthquake). Section 7204.01 was repealed effective January 1, 1992.

Since the requirements under Section 7204.02 have been accomplished, it appears that the statute is no longer needed, and, therefore should be repealed.

**Section 7204.5**, added by SB 1102 (Ch. 620, Stats. 1997), provided certain offset provisions for the County of Napa and any cities located in Napa County. It allowed Napa County and cities to take up to three years to repay the Board for refunds of the local tax on oak barrels purchased for making wine. The provisions required the Board to notify the city or county of amounts subject to offset and, upon request of a city or county, to remit to the city or county that offset portion of the refund deducted from tax revenue transmittals by the Board which exceeded \$50,000 in a calendar quarter. The Board, thereafter, would deduct a pro rata share of that offset portion from future transmittals of tax revenues, over a period not to exceed three years, until the entire amount of the offset portion had been repaid.

In 1996, information submitted to the Board supported the fact that oak wine barrels were purchased primarily for the purpose of incorporating oak into the wine to be sold, and not purchased as containers for aging wine. Effective April 3, 1996, sales and use tax Regulation 1525 was amended to recognize that oak wine barrels purchased for such purposes were purchased for resale based on existing law. The amendment to Regulation 1525 had retroactive treatment and applied to overpayments of tax on sales or purchases of oak wine barrels within the statute of limitation period (i.e. three years from the due date of the return for the period for which the overpayment was made).

As a result of this regulatory change, any overpayments of local sales taxes to be refunded to taxpayers had to be deducted from future transmittals of local taxes to local entities. The refund of local taxes posed a financial hardship for certain local entities, such as Napa County. SB 1102, effective January 1, 1998, sought to ease the financial hardship on the County of Napa and the cities located within Napa County by providing a three-year period for Napa and any cities to repay the local taxes. Since the repayment has been completed, Section 7204.5 is no longer needed.

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**Section 7208**, added by SB 636 (Ch. 1785, Stats. 1959) and took effect September 18, 1959, provides that in the case of tangible personal property purchased from a retailer whose place of business was located in a county which, following purchase, imposes a tax pursuant to Bradley-Burns law operative on or after July 1, 1959, but not later than July 1, 1960, a notice of determination of tax shall be issued within four months of the end of the quarterly period during which the storage, use, or other consumption of the property became taxable.

Section 7208 provided a special statute of limitation period on the issuance of a notice of determination of local use tax where all of the following conditions existed:

1. The purchaser purchases the property from a retailer whose place of business was in a county which at the date of the purchase was not imposing a Bradley-Burns tax.
2. The purchaser used the property in a county which imposed a Bradley-Burns tax.
3. After the date of the purchase, the county in which the retailer's place of business was located began imposing a Bradley-Burns tax.
4. The newly imposed Bradley-Burns tax went into effect for the first time between July 1, 1959, through and until July 1, 1960.

Bradley-Burns law was enacted in 1955. By 1961, all 58 counties had elected to opt into the Bradley-Burns system. Section 7208 was enacted in 1959 and took effect September 18, 1959. At that time, eight counties (Alpine, Amador, Fresno, Plumas, San Mateo, Santa Barbara, Siskiyou, and Tehema) did not have a Bradley-Burns tax in effect. However, three counties (Amador, Fresno, and Tehema) had adopted a Bradley-Burns tax which became operative on October 1, 1959.

As previously stated, all counties adopted the Bradley-Burns tax by 1961. Therefore, the provisions of Section 7208 are no longer applicable and the statute should be deleted.

**Section 7251.2** was enacted in 1990 (Assembly Bill 3736, Ch. 1490, Stats. 1990) to specify that if two local district tax measures submitted to the voters of Los Angeles County at the November 6, 1990 general election were approved, that the rate of each tax would be limited to 0.25 percent. Both of these measures were to impose a district tax at a rate of 0.50 percent each. However, if both measures would have passed, Los Angeles County would have exceeded the combined district rate limitation of 1 percent (rate limitation in effect in 1990). The enactment of Section 7251.2 resolved this issue by specifying that if both measures pass, then each ordinance would impose only a 0.25 percent tax rate, instead of a 0.50 percent.

Known as the “Los Angeles County Transportation Commission 1990 Fast-Track Anti-Gridlock Transit Improvement Proposition” and the “Local Communities Safety Act – Los Angeles County Regional Justice Facilities Financing Agency,” the Los Angeles Transportation Commission tax passed and became operative on April 1, 1991, and the Los Angeles County Regional Justice Facilities Financing Agency failed.

Since Section 7251.2 applies only to the two district tax measures that were submitted to the voters of Los Angeles County at the November 6, 1990 general election, it seems that the statute is no longer needed, and, therefore should be repealed.

**Section 7271.05**, added by SB 30 (Ch. 37, Stats. 1990 First Extraordinary Session), provides that, beginning July 1, 1992, and for each year through and until July 1, 1997, the Board shall reduce district taxes transmitted to the Santa Cruz Metropolitan Transit District by an amount to recover 1/5 of the amount transmitted to the district pursuant to Section 7271.03, plus interest. Section 7271.03, also added by SB 30, provided the procedures whereby the district could make a request to the Controller to receive an amount representing reductions in district tax revenues directly attributable to the October 17, 1989 earthquake (known as The Loma Prieta Earthquake). Section 7271.03 was repealed effective January 1, 1992.

Since the requirements of Section 7271.05 have been accomplished, it appears that the statute is no longer needed, and, therefore should be repealed.

### **Proposed Law**

This measure would repeal Sections 7204.02, 7204.5, and 7208 of the Bradley-Burns law and Sections 7251.2 and 7271.05 of the District tax law that have become obsolete.

### **Comment**

**Purpose.** The repeal of these sections is intended to clean up the tax code. These statutes were enacted to serve a specific purpose and that purpose has been accomplished. As such, these statutes are no longer used and, therefore, should be repealed.

### **Repeal of Redundant Provisions**

*Revenue and Taxation Code Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65*

#### **Current Law**

Senate Bill 566 (Ch. 709, Stats. 2003), effective January 1, 2004, authorizes cities to levy transactions and use taxes for general or special purposes, subject to voter approval. Prior to the enactment of SB 566, cities needed specific legislative approval in order to place a sales tax ordinance before the voters of that city. SB 566 provided cities with the same authority that exists for counties and eliminated the need for all of the special “city” legislation.

SB 566 added both Sections 7285.9 and 7285.91 to the Transactions and Use Tax Law. Section 7285.9 authorizes a city to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes, if the ordinance imposing that tax is approved by a majority of the local electorate. Section 7285.91 authorizes a city to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for special purposes, if the ordinance imposing that tax is approved by a two-thirds vote of the local electorate.

Under existing law, Section 7286.47 authorizes the City of Redding to levy a transactions and use tax at a rate of 0.25 percent for general purposes, subject to a majority voter approval. Since City of Redding can levy a general purpose tax at a rate of 0.25 percent under the general statute (Section 7285.9), this special statute is no longer needed. Similarly, Sections 7286.28 (City of Salinas), 7286.40 (City of Lakeport), 7286.56 (Town of Yucca Valley), and 7286.65 (City of Madera) authorize specified cities to impose a special tax at a rate of 0.25 percent, or multiples of 0.25 percent, subject to two-thirds voter approval. These cities can levy a special purpose tax at a rate of 0.25 percent, or multiples of 0.25 percent, under the general statute (Section 7285.91).

#### **Proposed Law**

This measure would repeal Sections 7286.28, 7286.40, 7286.47, 7286.56, and 7286.65 of the Transactions and Use Tax Law to eliminate special statutes that are now redundant due to subsequent legislation that authorized any city to levy a transactions and use tax for general or special purposes, subject to the required voter approval.

#### **Comment**

**Purpose.** Because cities can levy a transactions and use tax under Sections 7285.9 (general purpose) or 7285.91 (special purpose), these special enabling statutes are no longer necessary, and, therefore, these amendments are intended to repeal these redundant provisions.

### **Relief for Innocent Spouses**

*Revenue and Taxation Code Sections 7657.5, 8880, 11408.5, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1, and 60210.5*

#### **Current Law**

Under California's Sales and Use Tax Law, Section 6456 provides that under specified conditions, if a spouse establishes that he or she did not know of, and had no reason to know of, an understatement of a sales or use tax liability attributable to his or her spouse, and taking into account all facts and circumstances, it would be inequitable to hold that spouse liable for that tax liability, that spouse may be relieved of the liability attributable to the other spouse, without regard to community property laws.

Currently, there are no similar provisions for innocent spouse relief in any of the special tax and fee programs administered by the Board.

#### **Proposed Law**

This measure would add similar innocent spouse relief provisions under the following Board-administered special tax and fee programs:

Motor Vehicle Fuel Tax Law	Energy Resources Surcharge Law
Use Fuel Tax Law	Emergency Telephone Users Surcharge Law
Private Railroad Car Tax	Hazardous Substances Tax Law
Cigarette and Tobacco Products Tax Law	Integrated Waste Management Fee Law
Alcoholic Beverage Tax Law	Oil Spill Response, Prev. & Adm. Fees Law
Timber Yield Tax Law	Underground Storage Tank Maint. Fee Law
Fee Collections Procedures Law	Diesel Fuel Tax Law

#### **Comment**

**Purpose.** This measure would address those situations in which a spouse (including a registered domestic partner) is seeking relief from tax or fee liabilities associated with a jointly owned business. Frequently, a business that is required to be registered with the Board for sales and use tax purposes is also required to register with the Board for other tax and fee programs. While the Board may provide relief to a qualifying innocent spouse under the sales and use tax law, no such relief could be provided for the same innocent spouse held liable for amounts owed under the Board's other tax and fee programs. For example, a husband and wife jointly-owned wine growing business that operates a tasting room that sells wine and other taxable products must register with the Board for collection of the sales and use taxes and for payment of alcoholic beverage taxes. A qualifying innocent spouse in that business could be relieved of sales and use tax liability, but not for alcoholic beverage tax liability. Similar situations could arise with owners of a gas station responsible for remitting both sales and use taxes and underground storage tank fees to the Board.

The incidence of persons registered under the sales and use program and another Board-administered tax or fee program has increased due to the increase in the types of fees and taxes that are collected by the Board and to changes that have occurred in certain industries. Innocent spouses who own such businesses should be permitted to obtain equitable relief from special tax and fee liabilities, given the same circumstances as those under which they are permitted to obtain equitable relief from sales and use tax liabilities.

**Correction of Reference to Motor Vehicle Fuel Tax Law**  
*Revenue and Taxation Code Sections 9304 and 60653*

**Current Law**

Under the existing Use Fuel Tax Law and the Diesel Fuel Tax Law, the State Controller is required to transfer moneys from the Motor Vehicle Fuel Account to the Highway Users Tax Account at the same time the Controller transfers money to the Highway Users Tax Account of moneys received under the Motor Vehicle Fuel License Tax Law. Operative January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel Tax Law pursuant to AB 2114 (Ch. 1053, Stats. 2000). However, the reference to the name of the law was not changed in Sections 9304 and 60653.

**Proposed Law**

This measure would delete the word “license” from the reference to the Motor Vehicle Fuel License Tax Law used in Sections 9304 and 60653 to correct the wording to refer to the Motor Vehicle Fuel Tax Law.

**Comment**

**Purpose.** These amendments would simply change the references to the “Motor Vehicle Fuel License Tax Law” that are contained in other provisions of law to the correct name – the Motor Vehicle Fuel Tax Law.

**Due Date Change for Cigarette Distributors**  
*Revenue and Taxation Code Section 30182*

**Current Law**

Under existing Cigarette and Tobacco Products Tax Law, a distributor may elect to pay on a monthly, twice-monthly or weekly basis for amounts owing for stamps and meter register settings purchased on a deferred basis. If a distributor elects a monthly basis, payment is required to be remitted on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased. A distributor electing a weekly payment basis is required to remit payment on or before Wednesday following the week in which the stamps and meter register settings were approved and released. And a distributor electing a twice-monthly payment basis is required to remit payment based on the following schedule:

- The first monthly remittance is due on or before the 5th day of the month. The amount due is equal to either one-half of the total amount of those purchases of stamps and meter register settings made during the preceding month or the total amount of those purchases of stamps and meter register settings made between the first day and the 15th day of the preceding month, whichever is greater.
- The second monthly remittance is due on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

In regards to the accompanying report, a distributor that elects to make deferred payments on a monthly or weekly basis is required to file a report on or before the 25th day of each month respecting his or her distributions of cigarettes and purchases of stamps and meter register settings; however, a distributor that elects to make deferred payments on a twice-monthly basis is required to file a report on or before the 5th day of the month.

**Proposed Law**

This measure would change the due date of the monthly report filed by distributors on twice-monthly basis to the 25th day of the month to conform to the reporting due date of distributors on a monthly and weekly payment basis.

**Background**

In 2003, the Legislature approved and the Governor signed AB 1666 (Ch. 867, Cogdill) which authorizes a cigarette distributor to elect a twice-monthly deferred payment option for amounts owing for stamps and meter register settings purchased on a deferred basis. This election, which was to remain in effect until January 1, 2007, was extended indefinitely in 2006 pursuant to AB 2001 (Ch. 70, Cogdill). As originally incorporated into law, the first monthly remittance for a twice-monthly payment basis election is due on or before the 5th day of the month. To correspond to this due date, the due date for a distributor's report respecting his or her distributions of cigarettes and purchases of stamps and meter register settings is the same date as the due date for the first monthly remittance.

**Comment**

**Purpose.** Delaying the report due date for a distributor electing a twice-monthly payment basis to be consistent with the report due date for a distributor electing a monthly or weekly payment basis is intended to provide a distributor more time to prepare the report, which could possibly eliminate reporting errors. Currently, distributors on a twice-monthly payment basis only have 5 days to prepare and submit their report. In addition, having the different due date for cigarette reports and tobacco returns may be confusing and burdensome for a distributor of both cigarettes and tobacco products.

Furthermore, reports received on the 5th day of the month by distributors electing a twice-monthly payment basis are manually processed by Board staff. Because of the limited number of distributors electing a twice-monthly payment basis, Board computers were not programmed to accept reports on or before the 5th day of the month. However, if more distributors elect the twice-monthly payment basis in the future, the Board would be forced to program computers to accept those reports. As such, the measure could result in a cost savings related to this computer programming (Board computers are already programmed to accept reports on or before the 25th day of the month for distributors electing a monthly or weekly payment basis).

And lastly, delaying the report due date for distributors electing a twice-monthly payment basis would not affect the Board's administration of the cigarette tax program.



**Consistent Due Dates**  
*Revenue and Taxation Code Section 30187*

**Current Law**

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Sections 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20).

Sections 30123 and 30131.2 also impose a surcharge on tobacco products at a rate to be annually determined by the Board. The tobacco products tax rate is equivalent to the combined rate of tax on cigarettes. The surcharge rate for fiscal year 2006-07 is 46.76 percent.

Section 30187 requires every consumer or user subject to the excise tax resulting from the use or consumption of untaxed cigarettes or tobacco products in this state from whom the cigarette and/or tobacco products tax has not been collected to file with the Board, on or before the 25th day of the month following receipt of cigarettes or tobacco products, a report of the amount of cigarettes received by him or her in the preceding calendar month, submitting with the report the amount of tax due.

Under current Sales and Use Tax Law, sales and use tax is required to be remitted and reported to the Board quarterly on or before the last day of the month next succeeding each quarterly period. In order to facilitate the collection of taxes, the Board may require reporting periods other than a quarterly basis, such as monthly or yearly.

**Proposed Law**

This measure would make the due date for the excise tax return consistent with the use tax return for consumers reporting under the Cigarette and Tobacco Product Internet Program.

**Comment**

**Purpose.** The Board recently implemented the Cigarette and Tobacco Product Internet Program to collect the California state excise taxes and use taxes from California consumers purchasing untaxed cigarettes and/or tobacco products from out-of-state Internet retailers, and/or by way of mail or telephone, for self-consumption in California.

Under the federal Jenkins Act, the Board receives information from out-of-state sellers who ship cigarettes to California customers. The seller is required to provide the buyer's name and address, and the brand and quantity of cigarettes sold or transferred. These records from out-of-state retailers show that purchasers received a shipment of cigarettes and/or tobacco products purchased through the Internet, phone, or mail, and, have not paid the state excise and use tax due.

As such, the Board registers these purchasers as cigarette and/or tobacco consumers and sends them returns to pay the state and local taxes owed. Every registered consumer receives two returns (a quarterly excise tax return and a use tax return) to report out-of-state purchases and pay the excise tax and the use tax due on the purchase. (The use tax is the equivalent rate of the sales tax but it is owed by the purchaser instead of the retailer.) However, the due dates for the payment of tax and the two returns differ, which is confusing to the taxpayer and could result in late tax returns and payments upon which a 10 percent penalty and interest may be imposed.

This provision is intended to make the due dates of the taxes consistent, thereby eliminating confusion and increasing compliance in remitting the taxes timely.

**Emergency Telephone Rate Period Change**  
*Revenue and Taxation Code Sections 41030, 41031, and 41032*

**Current Law**

Currently, telephone service customers in California pay a surcharge that supports the state's 911 emergency telephone number system (911). Under current law, the surcharge rate is a set percent of a customer's monthly bill for telephone services for calls made within the state. The surcharge rate in any year may not exceed three-quarters of 1 percent or be less than one-half of 1 percent.

Under the existing Emergency Telephone Users Surcharge Law, the DGS is required to annually determine, on or before September 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate determined by the DGS applies for the period beginning November 1 of the current calendar year and ending October 31 of the next succeeding calendar year once the Board has fixed (approved) the determined rate. The Board is required each to publish the new surcharge rate in its minutes by no later than September 15 each year.

Current law provides that every service supplier shall collect the surcharge from each service user at the time it collects its billings from the service user. A service supplier is defined as any person supplying intrastate telephone communication service to any service user in this state.

The surcharge rate is presently 0.50 percent of the amounts paid for intrastate telephone services in this state. It is paid to the Board and deposited in the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund. The revenues are used to reimburse government agencies and telephone companies for equipment and related costs associated with California's 911 emergency telephone number system.

**Proposed Law**

This measure would amend Sections 41030, 41031, and 41032 of the Emergency Telephone Surcharge Law to change the effective date and time period for the imposition of a newly determined surcharge rate to be January 1 to December 31 of the next succeeding calendar year.

This measure would also allow the DGS an additional 30 days to determine the annual surcharge rate and provide the Board an additional two months to publish and notify taxpayers of the new surcharge rate.

**Comments**

**Purpose.** This measure would prevent the additional burden imposed upon service suppliers of preparing and filing an extra return when a new rate is determined which could reduce the number of errors resulting from taxpayers filing split returns.

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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

The surcharges imposed and the amounts required to be collected by service suppliers are due monthly unless, however, the Board requires returns and payment of the amount of surcharges for a calendar quarter or calendar year period to ensure payment or to facilitate the collection by the state of the amount of taxes. As such, service suppliers that are required to file quarterly or annual returns have to file an extra (split) return whenever the rate changes effective November 1. For example, a service supplier required to file quarterly returns would file a return for the period of October 1 to October 31 reflecting the old surcharge rate and a second return for the period of November 1 to December 31 reflecting the new surcharge rate. This results in extra work for service suppliers and the possibility of increased errors when filing split returns.

Existing law also provides the Board a very short time to update and publish the new surcharge rate in its minutes (approximately 15 days). This could be problematic since the Board may not meet during the period from when the DGS determines the rate (on or before September 1) and the statutory mandated date the Board is required to publish the rate in its minutes (September 15). In 2006, the DGS had to determine and notify the Board of the new surcharge rate prior to the September 1 deadline so that the Board could fix and publish the new rate at its August 31 Board meeting. The Board wasn't scheduled to meet again until September 12 and 13, which could have been problematic for the Board to meet its September 15 deadline to publish the rate in its minutes if questions arose about the determined rate that required further research or any other any other surcharge-related issues needed resolution.

#### **COST ESTIMATE**

Enactment of the provisions of this measure would not materially impact the Board's administrative costs.

#### **REVENUE ESTIMATE**

The provisions of this bill would not materially affect the state's or local governments' revenues.

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